

SUBCHAPTER C—REGULATIONS AFFECTING SUBSIDIZED VESSELS AND OPERATORS

PART 249—APPROVAL OF UNDERWRITERS FOR MARINE HULL INSURANCE

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AUTHORITY: Sec. 204(b), 1109, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1279b); 49 CFR 1.66.

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§ 249.1 Purpose.

This part prescribes certain regulations governing the placement of marine hull insurance on vessels built or operated with subsidy or covered by vessel obligation guarantees issued pursuant to Title XI of the Merchant Marine Act, 1936, as amended (Act). (46 U.S.C. 1271-1279)

§ 249.2 Policy.

(a) It is the policy of the Maritime Administration (MARAD) that companies subject to requirements for the placement of marine hull insurance shall be afforded the widest possible opportunity to obtain the necessary coverage, with minimal regulatory constraints, with financially sound underwriters, and that such placement should not create any unnecessary impediments to competitive maritime operations.

(b) It is also the policy of MARAD to require owners of vessels with ODS or Title XI obligation guarantees to allow the American marine insurance market the opportunity to compete for the marine hull insurance on their vessels before such insurance is placed. Consistent with sound business judgment, owners will be expected to place their

insurance with the American market to the maximum extent possible when the rates, terms and conditions offered by American underwriters are competitive with those offered by foreign underwriters.

§ 249.3 Amounts of insurance.

MARAD will inform the owner of each vessel that is subsidized or covered by vessel obligation guarantees, prior to initial placement and at least annually thereafter, of the minimum amount of insurance required to be placed on the vessel.

§ 249.4 Eligibility.

In General. All required marine hull insurance must be placed with:

- (a) Underwriters licensed to do business in one or more of the United States;
- (b) Underwriters at Lloyds;
- (c) Member companies of the Institute of London Underwriters; or
- (d) Other underwriters specifically approved in advance by the Maritime Administration.

§ 249.5 Eligibility criteria.

(a) *U.S. Underwriters.* Underwriters licensed to do business in a state are eligible to participate without further consideration, provided they have at least a B security rating, as published in the latest edition of A.M. Best's Insurance Reports, and the amount of insurance does not exceed the limitation on risk prescribed in § 249.8.

(b) *Foreign Underwriters.* (1) Underwriters at Lloyds are eligible to participate without further consideration.

(2) Underwriters which are members of the Institute of London Underwriters (ILU) (i.e., *member* companies, not parents or affiliates of the member companies) are eligible to participate without further consideration, provided that the ILU member company actually underwriting the risk maintains a trust fund in the United States for the benefit of its U.S. policyholders in an amount at least equal to the minimum provided in § 249.7(d), and the

amount insured does not exceed the limitation on risk prescribed in § 249.8. Parent companies or affiliates of the ILU member companies are treated as other foreign underwriters under subsection (c) of this section.

MARAD reserves the right to review this eligibility at any time.

(c) *Other Foreign Underwriters.* Foreign underwriters, other than those specified in paragraphs (b) (1) and (2) of this section, may also be eligible to participate in the writing of marine hull insurance on MARAD program vessels, if approved to do so in accordance with the procedures contained in §§ 249.6 and 249.7.

(d) *Documentation of eligibility.* It shall be the responsibility of the vessel owner and its broker to ensure that the requirements of this section are met, and they should be able to provide MARAD, upon request, with documentation to that effect.

§ 249.6 Application procedures.

(a) MARAD may grant specific approval for underwriters described in § 249.5(c) to participate in the writing of marine hull insurance on MARAD program vessels, only in advance of any actual placement.

(b) Only those foreign underwriters who have obtained a high rating (A or comparable) from an accepted international rating service may apply, and if approved, such approval will be contingent upon continued maintenance of such rating. MARAD will make available to interested parties the names of any accepted international rating service.

(c) To seek approval, an applicant shall submit to MARAD:

(1) Certified financial data for the five previous years in sufficient detail to enable MARAD to assess the financial strength and solvency of the applicant. Normally, this would be the same data which the underwriter must submit to the regulatory agency in its country of domicile. However, MARAD may request additional data if the applicant's submissions are considered inadequate;

(2) A comprehensive description and English language version of the insurance regulatory regime that is in place in the insurer's country of domicile.

(After review, MARAD may contact the foreign national regulatory authorities, as appropriate);

(3) An affidavit in writing, executed by an agent of the applicant who is a domiciliary of the United States, and supported by appropriate documentation, to demonstrate that there is nothing in either law or practice to preclude a U.S. insurer from obtaining the same access to the applicant's home market as the applicant is seeking to the U.S. market, and

(4) The details of its reinsurance program, if it wishes to write any risks in excess of five percent of its policyholders' surplus. These details shall be accompanied by a statement that clearly demonstrates the special circumstances and good cause by which MARAD should be persuaded to modify its general policy on limitation of risk described in § 249.8.

§ 249.7 Approval

(a) Approval of the applicant will be based upon an assessment of the applicant's financial condition and solvency, its rating by an accepted international rating service, suitability of the regulatory regime under which the applicant must operate in its home country, and on the principle of reciprocal non-discrimination. MARAD will not approve access to the U.S. hull insurance market, if U.S. insurers are denied similar access to the hull insurance market in the applicant's home country.

(b) MARAD will publish in the FEDERAL REGISTER each Notice of Application received from foreign underwriters described in § 249.5(c), affording interested persons an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which might exist in the applicant's country of domicile.

(c) In granting approval, MARAD will consider all materials available to it, and may impose reasonable terms and conditions upon any such approvals granted.

(d) Upon approval, applicant will be required to establish and maintain for the benefit of its U.S. policyholders a U.S. trust fund in the amount of at least \$1.5 million, such amount to be